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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

PLUMBERS AND STEAMFITTERS LOCAL 60 PENSION TRUST, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

META PLATFORMS, INC., MARK ZUCKERBERG, DAVID WEHNER, SHERYL SANDBERG, and SUSAN LI,

Defendants.

Case No. 4:22-cv-01470-YGR

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS THE AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Date: April 16, 2024
Time: 2:00 p.m.
Court: Courtroom 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

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I. INTRODUCTION

Plaintiffs' opposition lays bare the weakness of the Second Amended Complaint ("SAC"). Plaintiffs claim to have cured purportedly limited flaws identified in the Court's written dismissal order but ignore (at 1-2) that the order expressly incorporated many other "reasons stated on the record" that demanded dismissal. FAC Order at 1. Plaintiffs have not solved the first set of issues and scarcely address the latter—much less grappled with the additional defects that the Court did not reach given "all of the problems" with their prior complaint. Hr'g Tr. 73:16-23. Plaintiffs have not met—and having had three chances already, cannot meet—the "heightened pleading requirements" applicable here. *Nguyen v. Endologix, Inc.*, 962 F.3d 405, 414 (9th Cir. 2020).

Plaintiffs fail to allege an actionable misstatement that caused their losses. On the iOS changes, Plaintiffs claim investors were led to believe that the iOS changes were benign or immaterial, even though Defendants repeatedly said the opposite. And Plaintiffs double down on mischaracterizing a forward-looking projection for 2022, while ignoring that Meta *met* its Q4 2021 revenue guidance. On Reels, Plaintiffs similarly twist Defendants' words, ignore vital context, and rely on generic or vague statements that could not have misled anyone. As for their Sandberg allegations, Plaintiffs make two dispositive concessions—that Defendants had no duty to admit unadjudicated accusations and that Sandberg could reimburse Meta for any improper assistance, if any were found someday. Plaintiffs' allegations regarding Sandberg are wholly unsupported.

Plaintiffs are even weaker on scienter. After first insinuating (at 2) that the Court already found scienter—when the Court's ruling did not even reach that issue—Plaintiffs offer a scienter theory that makes no sense. They argue that Defendants tried to inflate Meta's stock price by *repeatedly expressing concern* about the actual and potential impacts of the iOS changes—just not using Plaintiffs' preferred language—only to see Meta's stock drop immediately. And despite the stock drops, Plaintiffs claim Defendants tried to keep Meta's stock price up for a few short months, without making any suspicious stock sales, before voluntarily revealing the truth. That is not a compelling scheme to defraud the market. Similarly, for Reels, Plaintiffs claim that Defendants falsely asserted that Reels was already profitable by *repeatedly telling investors* that the product was monetizing more slowly than older products and that Meta was prioritizing long-term gains

over short-term returns. That is not a cogent plan to inflate stock prices, either. So too of Plaintiffs' theory that Defendants sought to mislead investors by not preemptively disclosing allegations from press articles, which to this day have not been substantiated or resulted in any change to Sandberg's reported compensation. Across the board, the innocent explanation is far more compelling: At every turn, Defendants worked to keep investors informed as accurately as they could amidst significant uncertainty.

Given these independently dispositive and incurable defects, there is no need to drag out this meritless lawsuit any longer. This case should be dismissed with prejudice.

II. ARGUMENT

A. The Allegations About iOS Privacy Changes Must Be Dismissed Again

Plaintiffs' iOS changes arguments are riddled with flaws, but their most glaring error is asserting that Defendants "affirmatively create[d] an impression" that the iOS changes were benign or immaterial. *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002). Defendants told investors *not* to draw that inference, while warning that the iOS changes were "significant," "very challenging," and "fundamentally profound." Mot. at 2-4. Indeed, Meta's stock *dropped* after each challenged statement from Q2 and Q3 concerning the iOS changes. *See id.* at 1, 4, 13. And when Meta's stock dropped again after Q4, Plaintiffs' own analyst reports confirmed that investors were surprised by projections for 2022, not any newly revealed truth about 2021. *See id.* at 17. Plaintiffs have thus failed to adequately plead falsity or loss causation.

1. The Old Challenged Statement Was Not False Or Misleading

Plaintiffs' opposition leads with their challenge to **Statements 1a and 1b**, which this Court correctly found meritless. These Q2 and Q3 risk disclosures stated that: (i) the iOS changes "have limited our ability to target and measure the effectiveness of ads on our platform and negatively impacted our advertising revenue"; and (ii) "if we are unable to mitigate these developments as they take further effect in the future, our targeting and measurement capabilities will be *materially* and adversely affected, which would in turn *significantly* impact our future advertising revenue growth." (Emphasis added.) Plaintiffs claim (at 8) that omitting "significantly" and "materially" from the first (retrospective) sentence, while using them in the second (prospective) sentence,

"implied that the current impact was not yet material" and that "the risk of a *material* adverse effect from the iOS privacy changes was merely hypothetical." But no reasonable investor could have taken the absence of adverbs in the retrospective portion of **Statements 1a and 1b** to mean that the existing impact was not material—particularly because Defendants explicitly told them not to. Wehner and Li made clear that Meta "was *declining* to characterize the extent or materiality of the impact" in these disclosures, Opp. at 10 (emphasis added), and letting hard financial data speak for itself. *See* Ex. 17 at 6. Plaintiffs nowhere dispute the accuracy of that financial data.

The rest of "the context in which [**Statements 1a and 1b**] were made is key" as well. *Police Ret. Sys. Of St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051, 1060 (9th Cir. 2014). Defendants warned all along that the iOS changes would be "very problematic," Ex. 5 at 15, stated after Q2 that they were already proving "very challenging," Ex. 16 at 14, and declared after Q3 that they had been "fundamentally profound," Ex. 22 at 7. Plaintiffs respond (at 13) that Defendants said the iOS changes had been problematic and challenging *for advertisers*, and that Meta was "working with them to help" provide "solutions." True, but as this Court noted, "[e]verybody knows" Meta "makes its money" through "advertisements." Hr'g Tr. 59:18-20. Investors can put two and two together. Plaintiffs also assert (at 13) that Defendants said the iOS changes were "fundamentally profound," "*not* that the *impact*" was "profound." This is splitting hairs. Defendants said that "additional privacy features" included with another iOS upgrade were not "as *significant* a headwind as the iOS 14 [privacy] changes"—the changes at issue here—"which were *fundamentally profound*." Ex. 22 at 7 (emphasis added). The upshot of this statement, like the others, was obvious: The iOS 14 changes were a big deal. All this "put [**Statements 1a and 1b**] in context" and "substantially mitigat[ed]" any "potentially misleading" ambiguity. *In re Leapfrog Enter., Inc. Sec. Litig.*, 200 F. Supp. 3d 987, 1003-04 (N.D. Cal. 2016).[1]

[1] Plaintiffs' reliance (at 8) on *In re Alphabet, Inc. Securities Litigation*, 1 F.4th 687 (9th Cir. 2021), and *In re Facebook, Inc. Securities Litigation*, 87 F.4th 934 (9th Cir. 2023), is misplaced. In *Alphabet*, the challenged statements stated that "[t]here have been no material changes to our risk factors," even though an internal memorandum had "identified" severe "security vulnerabilities." 1 F.4th at 702. And in *Facebook*, the challenged statements did not explicitly inform investors about alleged misuse of users' data that was purportedly "known" already. 87 F.4th at 951. Here, by contrast, the iOS changes were no secret. And **Statements 1a and 1b** flagged that the iOS changes had *already* "negatively impacted" Meta's business, SAC ¶¶ 235, 243, precisely the kind of past tense disclosure that the Ninth Circuit found missing in *Alphabet* and *Facebook*.

Plaintiffs nevertheless insist (at 8 n.2) that Defendants should have "edited" **Statements 1a and 1b**—but don't say how. Apparently, Plaintiffs think Defendants had to use the adverbs "significantly" and "materially" in the retrospective part of these statements, not just in the prospective portion. This word-choice quibble cannot support a securities-fraud claim. Even read in isolation, **Statements 1a and 1b** did not imply anything about the extent of the existing impact. Using adverbs in the prospective sentence was consistent with 17 C.F.R. § 229.105's command to list "material" risk factors about Meta's future. Mot. at 16. And Meta's concededly accurate financial disclosures after Q2 and Q3 enabled investors to assess for themselves how the company had been weathering the iOS storm, with no need for additional color commentary. *Id.* at 17. Plaintiffs do not even try to refute either point. Nor do they grapple with the damning reality that Meta's February 2, 2022 Form 10-K used *identical* adverb-free phrasing in describing the impact that had been felt through Q4 2021. *Id.* at 16.

At any rate, the adverbs "significantly" and "materially" are too vague to support a claim, as this Court recognized. *See* Mot. at 16. Plaintiffs bemoan (at 11) supposedly "selective quotations," but the Court said: "The word 'significant' cannot be, in and of itself, sufficient for a securities violation," Hr'g Tr. 12:6-8, and "material" is "meaningless . . . without understanding" the "substance" behind it, *id.* at 40:23-41:2. Plaintiffs counter (at 11) that "material" is "'capable of objective verification,' using SEC guidelines, under which revenue impacts greater than 5% are presumptively material"—and then concoct back-of-the-envelope calculations of a different metric ("net income") to distract from the fact that revenue decreases in Q2 were less than 5%. There are several problems with this approach. First, the SEC warns that this 5% figure is just "a 'rule of thumb,'" not some magical threshold that confers materiality. SEC, Staff Accounting Bulletin No. 99, 64 FR 45150-01 (1999). Second, **Statements 1a and 1b** discussed "advertising revenue," not net income. And third, as Defendants explained but Plaintiffs ignore, "significantly" (not "materially") is the only modifier Meta used to characterize potential future *revenue* effects (as distinct from targeting and measurement effects). Mot. at 16.

Plaintiffs fall back to arguing (at 11) that **Statements 1a and 1b** *must* have been misleading because "J.P. Morgan" called the Q2 and Q3 impacts "'much bigger than expected.'" But

J.P. Morgan was referring to the "iOS headwind of ~$10B" that was "expected in 2022," not the Q2 or Q3 impact for 2021. Ex. 31 at 1. J.P. Morgan also recognized that Meta *met* its revenue guidance for Q4 2021. *Id.* at 4; *see* Mot. at 17. The other analysts Plaintiffs cite were likewise surprised only by the projected $10 billion impact for 2022, not past results for 2021. *See, e.g.*, Ex. 32 at 1 (observing that Meta's "Q4 results [for 2021] were OK, but the Q1 outlook [for 2022] was meaningfully below expectations); Ex. 29 at 1; Ex. 33 at 1. Indeed, no analyst claims to have been confused by **Statements 1a and 1b**. *See* Exs. 30-34. That is because no reasonable investor would have been misled, particularly given the surrounding context.

2. The New Challenged Statements Were Not False Or Misleading

Plaintiffs fare no better trying to defend (at 12-15) their belated challenges to various statements that (i) noted the Q2 and Q3 impacts from the iOS changes were "in line" with Meta's expectations and (ii) discussed the company's efforts to mitigate the impact to the extent possible.

"In Line" With Expectations (Statements 4a-4e). The SAC had two falsity theories, but Plaintiffs defend only one of them. Plaintiffs do not dispute that their first theory—i.e., alleging that Meta "conducted internal studies calculating the impact" of the iOS changes, SAC ¶ 121—fails because Meta had no duty to "reveal [any such] internal projections." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 391 (9th Cir. 2010); *see* Mot. at 13. Plaintiffs instead focus on their second theory—i.e., that Wehner said after Q1 that "we think" the impact "will be manageable," SAC ¶ 73, so the "in line" with expectations statements purportedly assured investors that the Q2 and Q3 impacts were immaterial. This theory is meritless too.

First, Meta's expectations were grim all along, *supra* at 3, and "manageable" means "capable of being managed"—*not* "immaterial." *Manageable*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/manageable (last visited Feb. 15, 2024). Wehner's Q1 statement said only that Meta believed it could manage this serious problem, not that the problem was minor. Indeed, he warned that Meta was "concerned" about the iOS changes. Ex. 11 at 11. And after Q4, Wehner *again* said the impact "was in line with our expectations"—which was true, given Meta's low expectations and accurate Q4 revenue forecast. Ex. 25 at 10. Defendants' motion explained all of this. *See* Mot. at 12-14. Plaintiffs grapple with none of it.

Second, Wehner's Q1 statement was an opinion: He said "we think" the impact "will be manageable." SAC ¶ 73. So to the extent **Statements 4a-4e** reiterated that sentiment—which is the crux of Plaintiffs' logic—those statements are also inactionable opinions. *See* Mot. at 14. Plaintiffs' rejoinder (at 13 n.7) that these "were falsifiable statements of fact about whether the actual measured impact" was "consistent with Meta's forecasts" makes no sense: Wehner merely told investors that he believed the impact would be manageable, and Meta prudently *declined* to provide numerical forecasts. *See* Mot. at 3-4. Plaintiffs are also wrong to claim (at 14-15) that "opinions are actionable" anytime they are "not 'fairly align[ed] with the information in [the speaker's] possession at the time.'" Opinions are *in*actionable, except where (i) "the speaker did not hold the belief she professed," (ii) a "supporting fact [the speaker] supplied [is] untrue," or (iii) the statement omits "facts going to the basis for the issuer's opinion" in a misleading way. *City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605, 615-16 (9th Cir. 2017) (quoting *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 184-85, 188 (2015)). Plaintiffs do not—and cannot—do any of that.

Third, calling something manageable is too "imprecise" to be even potentially actionable. *Weston Family P'ship LLLP v. Twitter, Inc.*, 29 F.4th 611, 621 (9th Cir. 2022). Plaintiffs don't disagree, insisting instead (at 13-14) that "no such precision was required" if "investors would have understood ['manageable'] to mean that the impact was materially different from an impact that would give rise to an annualized $10B revenue headwind." But Plaintiffs cite no authority suggesting that inactionable puffery can magically become actionable in this way. And as explained, that $10 billion figure was a projection for the iOS impact *going forward* in 2022; analysts were *not* surprised by Meta's 2021 performance. *See supra* at 4-5.

Mitigation Efforts (Statements 5a, 5c & 5d). On the challenged statements related to mitigation, Plaintiffs do not address **Statement 5a** and have thus forfeited any challenge to it. *See Castro v. ABM Indus., Inc.*, 325 F.R.D. 332, 335 n.3 (N.D. Cal. 2018) (Gonzalez Rogers, J.). As for **Statements 5c and 5d**—i.e., Li's Q3 remark that "*I think* the underreporting of web conversions has really been a bigger issue than we expected," and Sandberg's Q3 prognostication that, "[o]n measurement, *we think* we can address more than half of that underreporting by the end

of the year"—Plaintiffs' responses fail. SAC ¶¶ 239, 241 (emphasis added).

Plaintiffs have no answer for the fact that both are inactionable opinions, apart from their dead-wrong reading of *Omnicare*. *See supra* at 6. They also continue to mischaracterize both statements. Plaintiffs claim (at 14) that **Statement 5c** asserted "that the iOS impact largely resulted from Meta's underreporting of web conversions." That is not what Li said. Li stated that, in her view, underreporting had been "a bigger issue" than anticipated—not that it was the biggest issue caused by the iOS changes. Mot. at 15. Plaintiffs also claim (at 14) that **Statement 5d** asserted that "underreporting" was "one of the two 'big challenges' coming from [the iOS] changes." That is not what Sandberg said either. Sandberg remarked that "targeting" and "measurement" more generally were the "two big challenges" facing Meta. *Id.*

At any rate, Plaintiffs cannot get around the fact that they are impermissibly pleading "[f]raud by hindsight." *Ronconi v. Larkin*, 253 F.3d 423, 430 n.12 (9th Cir. 2001). Their only response is to say (at 15) that Li's statement "made clear that Meta was tracking the impact of the underreporting in real time." Not so. No allegations suggest that Defendants had the power to divine instantaneously exactly how complicated technical issues caused by the iOS changes would play out across Meta's billions of users and millions of advertisers. What Plaintiffs' allegations actually show is that Meta could more precisely discern these effects later on, with the benefit of more time, more data, and more analysis. That is not fraud.

3. Plaintiffs Also Fail To Plead Loss Causation

Plaintiffs' loss causation theory fails for the same reason it did before: They have not pled a "corrective disclosure" that "revealed the [purported] truth" and "caused [Meta's] stock price to drop." *Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1210 (9th Cir. 2016); *see* Mot. at 17-18.

Plaintiffs continue to misconstrue Wehner's projection of a "$10 billion" headwind for 2022 as somehow "reveal[ing] that Meta had misled investors" about the preceding year. SAC ¶ 130. That is wrong. Plaintiffs accept that Meta's financial numbers for Q2 and Q3 were accurate and—again—Meta *met* its numerical revenue guidance for Q4 2021. What some investors saw as surprising was not anything Meta said about 2021, but Meta's forward-looking guidance for 2022, which was "below" expectations. Ex. 30 at 1; *see supra* at 4-5. For that reason, the Court correctly

rejected Plaintiffs' supposed "extrapolation" of the "forward-looking" $10 billion figure. Hr'g Tr. 47:19-48:1. And the Court reprimanded Plaintiffs' counsel, noting that this misleading tactic was "not appreciated." Hr'g Tr. 47:1-3. Plaintiffs' assertion (at 16) that "[t]he Court rightly did not mention loss causation" as to the iOS changes "at the Hearing" blinks reality.

Plaintiffs' other loss causation arguments are equally off-base. They rely (at 15) on the fact that "85% of users" had installed iOS 14 by June 2021—but Meta disclosed that figure months earlier. *See* SAC ¶ 100. Plaintiffs further assert (at 15 n.9) that Wehner and Li's other Q4 remarks—i.e., that the iOS changes "really impacted our growth rates in Q3 and Q4," *id.* ¶ 130, and were "still" causing "significant targeting and measurement headwinds," *id.* ¶ 131—told investors facts that "Defendants had never previously revealed." That is just wrong. *See, e.g.*, Ex. 21 at 5 (noting after Q3 that targeting and measurement were even "more difficult," and that "if it wasn't for [iOS], we would have seen positive quarter-over-quarter revenue growth").

B. The Allegations About The Reels Introduction Must Be Dismissed Again

Plaintiffs' Reels allegations likewise fail for many reasons, and here too their opposition fails to grapple with the core problem: Over and over again, Defendants emphasized that they were following their usual long-term launch strategy for Reels, while telling investors that Reels was monetizing more slowly than, and competing with, more established offerings. *See* Mot. at 5-7, 18-19. Plus, monetization efforts were in their nascent stages on Instagram—and nowhere near even that point on Facebook. This "context" is "key." *Intuitive Surgical*, 759 F.3d at 1060. Plaintiffs' willful blindness to it confirms the weakness of their falsity theory.

1. The Old Challenged Statement Was Not False Or Misleading

Plaintiffs' opposition leads with their challenge to **Statements 2a and 2b**, which cautioned that: (1) "We also may introduce new features or other changes to existing products" that "attract users away from" older products with "more proven means of monetization"; and (2) "from time to time, these efforts have reduced, and may in the future reduce, engagement with" some products "in favor of" others "that we monetize less successfully or that are not growing as quickly," which in turn "may adversely affect our business and results of operations and may not produce the long-term benefits that we expect." Plaintiffs' arguments are as meritless as before. Mot. at 19-20.

This Court pinpointed the core problem: **Statements 2a and 2b** were "generic"—i.e., they referred to product launches generally, not Reels in particular—and therefore did not "open[] the door" to an omissions claim. Hr'g Tr. 57:16-58:20. Plaintiffs assert (at 18) that this "dialogue" at the July 18 hearing was "not a conclusion." Defendants understood otherwise, but regardless, the Court was exactly right: **Statements 2a and 2b** "only generally describe[]" the risks inherent in product launches across the board, without saying anything specific to Reels. *Kasilingam v. Stitch Fix, Inc.*, 2022 WL 10966359, at *2 (9th Cir. Oct. 19, 2022) (unpub.). So these statements did not create an "obligation to offer an instantaneous update of every internal development" about Reels, especially given "the oft-tortuous path of product development." *Twitter*, 29 F.4th at 620.

Plaintiffs respond (at 18) that "the SAC newly alleges that 'Reels was the only new product introduced during the Class Period,'" while faulting Defendants for "offer[ing] no argument for why [this fact] would not eliminate any concerns about the genericness" of these risk disclosures. Plaintiffs apparently missed page 20 of Defendants' motion, which explained that "Meta's discussion of 'material [risk] factors,' 17 C.F.R. § 229.105, had to cover past, present, and future product launches," making clear that these risk disclosures—in place since 2013—did not "refer[] *only* to the here-and-now Reels launch." Mot. at 20. And again, the reference to Reels in the same risk disclosure in Meta's February 3, 2022 Form 10-K just proves that this longstanding language covers product launches generally, including, *but not limited to*, Reels. *See id.* at 20 n.5.

What Defendants *did* say about Reels in other statements not challenged here—i.e., that Meta was pursuing its usual long-term launch strategy, Reels was monetizing more slowly than, and competing with, Meta's existing offerings, and monetization efforts were just beginning—"mitigat[ed]" any conceivable confusion. *In re Leapfrog*, 200 F. Supp. 3d at 1003-04. As the Court agreed, "everybody in the world knew [Meta's] growth strategy [wa]s to drive folks to Reels," even though Meta had put "no ads whatsoever on Reels on Facebook and only recently started ads on Instagram." Hr'g Tr. 54:19-55:1. No reasonable investor could have been misled.

2. The New Challenged Statements Were Not False Or Misleading

Plaintiffs' attempts to defend their challenges to **Statements 6a and 6b** fail as well. Both were made on Q2 earnings calls on July 28, 2021, yet Plaintiffs have pled *zero* facts suggesting a

negative impact from Reels during Q2. The only argument they advance (at 18) is that Defendants later said that Reels "adversely affected advertising revenue growth in the second half of 2021." But Q2 was in the *first* half of 2021—and Q2 is the only quarter relevant to **Statements 6a and 6b** (and **Statement 2a**, for that matter). So Plaintiffs still do not "adequately plead" that Reels "had a negative impact on Meta's business during Q2." FAC Order at 3. That alone is dispositive.

Plaintiffs also mischaracterize what Sandberg and Wehner said in **Statements 6a and 6b**—and cannot escape that both are inactionable as a matter of law. Mot. at 18-19. In **Statement 6a**, Sandberg said "we're seeing very strong growth in video monetization across, Watch, Feed, [and] Reels." Plaintiffs claim (at 19) this was false because Sandberg asserted that Reels was profitable overall but "Meta was not experiencing *any* economic growth" from Reels. But Sandberg said only that revenues earned from selling ads on video products (including Reels) were growing, not that those products were profitable overall. SAC ¶ 229. Plaintiffs have pled no facts suggesting *that* was untrue. And they nowhere dispute that "strong" is textbook puffery anyway. Mot. at 18.

Regarding **Statement 6b**, Plaintiffs attack Wehner's remark that "Reels is going well," claiming (at 19) that Reels was "not 'going well'" because it was supposedly "losing money" overall. And they further assert (at 19-20) that this statement was not puffery because it was an "objectively verifiable" representation that "Reels was currently financially successful." All of that is wrong. Plaintiffs ignore the "context" of this innocuous statement. *Intuitive Surgical*, 759 F.3d at 1060. Again, Defendants repeatedly said that Meta was following the same "playbook" as prior product launches—growing engagement with Reels first, and then slowly monetizing the product over time. *See* Mot. at 5-7. Any reasonable investor would thus understand "going well" to mean seeing engagement growing, not that Reels was unexpectedly net-profitable just *six weeks* after ads launched on Instagram, as Plaintiffs baldly assert. And regardless, Wehner's loosely positive characterization simply is not actionable under the securities laws. *Id.* at 19.

C. The Allegations About Sandberg's Compensation Must Be Dismissed Again

Plaintiffs' opposition confirms that they cannot show that Sandberg's compensation was misstated. And on their Section 14(a) claim, Plaintiffs' opposition rests their essential-link theory on mere bad press about unfounded accusations—which is insufficient as a matter of law.

1. Plaintiffs Still Have Not Pled An Actionable Misstatement

Plaintiffs' opposition gives the game away: It concedes (at 22) that "the Court [wa]s certainly correct that Defendants were not required *sua sponte* 'to disclose uncharged, unadjudicated wrongdoing.'" Exactly: Defendants had no duty to preemptively admit Plaintiffs' accusations in the challenged proxy statements, particularly since, at the time, those accusations had not even been levied, let alone confirmed. *See, e.g.*, *Baker v. Twitter, Inc.*, 2023 WL 6932568, at *8 (C.D. Cal. Aug. 25, 2023). This is especially true because Plaintiffs rely solely on unconfirmed news reports, and they have not alleged any actual finding of wrongdoing or change to Sandberg's reported compensation. That is dispositive, as this Court held. FAC Order at 4.

Plaintiffs are also stuck with their concession that Sandberg could simply reimburse Meta for the value of any assistance deemed personal in hindsight. Without citing any authority, Plaintiffs claim (at 25 n.19) that "the federal securities laws do not allow for do-overs." But SEC guidance provides that something is *not* "a perquisite or other personal benefit"—and "the company need not report" it—if the recipient "has actually fully reimbursed the company." SEC Guidelines, Question 119.07, https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm (last visited Feb. 15, 2024). That, too, independently forecloses Plaintiffs' claims.

Plaintiffs argue (at 23) that they have satisfied Rule 9(b) by alleging "what statements were misleading, who made them, where and when they were made, and how they are misleading" because that gives "'defendants notice of the particular misconduct'" alleged. Plaintiffs are wrong. Their conclusory allegations do *not* provide notice of what specific assistance was supposedly personal in nature. While Plaintiffs claim (at 23) to have described what Meta *said* in the challenged proxy statements, they have not provided legally required details about what Meta employees allegedly *did* to render the challenged compensation disclosures misleading. *See* Mot. at 20-21. Plaintiffs vague, unsourced, and unconfirmed press reports are insufficient. Without supporting facts, Plaintiffs cannot establish that Sandberg's earnings were misstated. *See Benavidez v. Cnty. Of San Diego*, 993 F.3d 1134, 1145 (9th Cir. 2021) (observing that Rule 9(b) is designed not just to provide notice but also to "deter[]" speculative or abusive lawsuits).

Plaintiffs scarcely defend the SAC's focus on alleged assistance "in writing and

promoting" Sandberg's two books. *See* SAC ¶¶ 153-66. Contrary to Plaintiffs' perfunctory rejoinder (at 23 n.16), there is nothing "melodramatic" about criticizing their blatant distortion of Option B's acknowledgements, which do not suggest that colleagues were conscripted into supporting Sandberg on company time. *See* Mot. at 21. And in any event, both books came out long before the earliest compensation period at issue. *See* Mot. at 21. While Plaintiffs claim (at 23) that Meta had "an ongoing duty to correct" its disclosures, any assistance leading up to book releases in 2017 and 2013 cannot have called for a correction regarding 2018 compensation.

Plaintiffs do not dispute that their Kotick allegations are unchanged. And as before, Plaintiffs have not offered *any* details about what Meta employees allegedly did in 2019. Their only specifics concern action taken by Meta employees in 2016 and Sandberg herself in 2019, which are irrelevant. *See* SAC ¶¶ 147-52. Plaintiffs respond (at 23) with the SAC's allegation that "'from 2016 up to and including 2019, Mr. Kotick and Defendant Sandberg regularly tapped employees . . . for public-relations advice.'" But that conclusory allegation does not detail the "who," "what," or "how" of any 2019 conduct, as Rule 9(b) requires. *Twitter*, 29 F.4th at 619. Plaintiffs also miss the point in relying (at 22) on SEC guidance that a "personal benefit" can "be provided for some business reason or for the convenience of the company." The SAC's allegation that the "team" included not just "Facebook employees," but also "outside advisers," SAC ¶ 147, suggests only that Meta employees (representing Meta's interests) coordinated with Sandberg's privately retained P.R. personnel (representing her interests). Such coordination was appropriate, since Sandberg's "reputation is concededly integral to the company's success." FAC Order at 4.

Finally, Plaintiffs offer a half-hearted footnote (at 23 n.15) on their implausible claims about Sandberg's wedding. That footnote does not solve the core problem this Court identified: The SAC gives "[n]o details" about who supposedly helped Sandberg or what they allegedly did. Hr'g Tr. 71:21-24. Plaintiffs' sole support for their bald allegation that Meta personnel helped plan her wedding is their tortured effort to transform a denial of wrongdoing into an admission of guilt. That is no cure for the complete absence of supporting factual allegations.

2. There Is Still No Essential Link To Support The Section 14(a) Claim

Section 14(a) requires Plaintiffs to plead that their losses were the "result of the corporate

action authorized by [the allegedly misleading] proxy statement." *Cowin v. Bresler*, 741 F.2d 410, 428 (D.C. Cir. 1984); *accord In re Paypal Holdings, Inc. S'holder Deriv. Litig.*, 2018 WL 466527, at *4 (N.D. Cal. Jan. 18, 2018). Having struck out on their prior attempts to satisfy this essential-link requirement, Plaintiffs' opposition tries (at 24) another theory: "The Proxy Statements authorized the election of [Sandberg] as director," and she was the subject of "an embarrassing scandal," which in turn caused a stock drop. That doesn't work. Negative news articles based on unconfirmed reports of alleged past conduct are "only an incident to the election of directors and not actionable under section 14(a)." *Cowin*, 741 F.2d at 428; *see* Mot. at 22.

Plaintiffs respond (at 24 n.18) that *Cowin* involved "'continued fraudulent acts' following an election," whereas "here, the loss-causing corporate action was the election of a director with an undisclosed scandal." That factual distinction makes no legal difference. The core teaching of *Cowin* is that losses stemming from something merely "incident to the election of directors," rather than "resulting directly from" their election, is "not actionable" as a matter of law. *Cowin*, 741 F.2d at 428. Bad press about an elected director's alleged prior conduct is just as incidental as any subsequent misfeasance—indeed, even more so.[2] There is no essential link.

D. There Is Still No Strong Inference Of Scienter

There is another, perhaps even more straightforward basis for dismissing this opportunistic lawsuit: Plaintiffs cannot show a "strong inference" of scienter. 15 U.S.C. § 78u-4(b)(2)(A). Plaintiffs do not claim that anyone made suspicious stock sales. Mot. at 23. They do not refute the fact that Meta's stock repurchase program gave Defendants every reason *not* to inflate the company's stock price. *See id.* And their scienter theory fundamentally makes no sense. As before, Plaintiffs' claims fail without even reaching scienter, but the stark gap between their allegations and the exacting standards for pleading scienter cuts another clear path to dismissal.

1. Plaintiffs' iOS Scienter Theory Makes No Sense

Plaintiffs' iOS scienter theory—that Defendants inflated Meta's stock price by falsely "assuring" the market that the iOS changes were no big deal—does not hold up. Again, Defendants

[2] Plaintiffs' reliance (at 24) on *In re Maxim Integ. Prod., Inc., Deriv. Litig.*, 574 F. Supp. 2d 1046 (N.D. Cal. 2008), is thus misplaced. *Maxim* is "distinguishable," as it "involved directors accused of backdating stock options" directly voted on by shareholders. *Paypal*, 2018 WL 466527, at *4.

repeatedly warned investors about the challenges and ongoing business harms. Mot. at 2-4. They disclaimed any suggestion that the impact was immaterial. *Id*. And after each of the challenged statements, Meta's stock price *dropped*. *Id.* If Defendants really "aimed to inflate [Meta's] share price," they "could have chosen far less ambiguous language than [they] did." *Boykin v. K12, Inc.*, 54 F.4th 175, 186 (4th Cir. 2022). All of this forecloses any inference of scienter.

Plaintiffs respond (at 17) that Defendants tried "to mitigate the impact of the iOS privacy" in the hopes "that their mitigation efforts would succeed by Q4." But Plaintiffs don't explain how or to what end. Meta's financial disclosures were concededly accurate all along, and Meta *met* the Q4 revenue guidance it provided after Q3. *Supra* at 5. And again, there were no suspicious stock sales, while the stock repurchase program was a powerful reason *not* to inflate Meta's stock price. Plaintiffs' theory simply "does not make a whole lot of sense." *Nguyen*, 962 F.3d at 415.

Plaintiffs fall back on the assertion (at 16-17 & n.11) that merely alleging knowledge of the iOS changes' impact shows scienter. That is wrong: What matters "is 'not whether defendants had knowledge of certain undisclosed facts,'" but instead whether they "knew or should have known that their failure to disclose those facts 'present[ed] a danger of misleading.'" *Petrie v. Elec. Game Card, Inc.*, 2011 WL 13130015, at *7 (C.D. Cal. Oct. 19, 2011). That is why the Ninth Circuit affirmed dismissal in *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046 (9th Cir. 2014), where the complaint "plausibly allege[d] knowledge" of an undisclosed manufacturing problem but did "not plausibly allege that [the defendants] intentionally misled investors, or acted with deliberate recklessness, by not disclosing the problem sooner." *Id.* at 1056-57; *accord In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869, 883 (9th Cir. 2012). Plaintiffs, in short, need compelling allegations of deliberate or severely reckless intent to mislead investors—which they do not have.

2. Plaintiffs' Reels Scienter Theory Makes No Sense

Plaintiffs' Reels scienter theory fails for similar reasons. Again, Defendants repeatedly told investors that Meta was pursuing the same growth-first-monetization-later strategy it had used with prior product launches. *See* Mot. at 1, 5-7. Defendants consistently warned that Reels was "monetizing at lower rates" and that it was "still very early on the advertising front." *Id.* And here too, Meta's stock price *dropped* after the challenged statements. *Id.* at 24. None of this squares

with a supposed scheme "to inflate [Meta's] share price." *K12*, 54 F.4th at 186.

Plaintiffs speculate (at 21) that Defendants wanted to "avoid[] any negative disclosure" by "wait[ing] until Reels was positively impacting [Meta's] business to comment." But Defendants stood to gain nothing from such delay. Meta's financial numbers were also undisputedly accurate. And Defendants *did* keep investors apprised of how Reels was progressing, telling them that engagement and monetization were growing, while cautioning that Reels was monetizing more slowly than, and competing with, other established products. *See* Mot. at 5-7.

Plaintiffs' bald assertion (at 20) that "Defendants knew that [Reels] was negatively impacting Meta's business during" Q2 and Q3 changes nothing. For one thing, as just explained, merely alleging knowledge of an undisclosed fact is insufficient. For another, Plaintiffs' allegations do *not* show contemporaneous knowledge about a negative Q2 or Q3 impact. They have zero facts on Q2. *See supra* at 9-10. And even as to Q3, Meta's Q4 disclosure that Reels "adversely affected advertising revenue in the second half of 2021" does not show Meta knew this by the end of Q3, rather than later on. *See* Mot. at 24-25 n.8.

3. Plaintiffs' Scienter Theory Regarding Sandberg's Conduct Also Fails

Plaintiffs' Sandberg allegations also fall far short of a strong inference of scienter.[3] The notion that Defendants deliberately or recklessly misled investors by not admitting unsubstantiated accusations that did not result in any change to Sandberg's reported compensation defeats itself. Plaintiffs' ipse dixit response (at 25) that Sandberg necessarily knows what she herself did is plainly insufficient to establish scienter. Plaintiffs were required to plead particularized allegations showing that Sandberg understood that she'd received improper personal benefits from Meta and that she nevertheless deliberately or recklessly caused the company to fail to disclose those benefits in proxy statements issued in 2021 and 2022. Plaintiffs have not satisfied this requirement.

III. CONCLUSION

For the foregoing reasons, this action should be dismissed with prejudice.

[3] Plaintiffs cite (at 7) one non-binding case stating that Section 14(a) does not require scienter. But as Defendants explained, that is incorrect given this Court's responsibility to narrowly construe Section 14(a)'s judicially created cause of action. *See* Mot. at 22 n.6.

Dated: February 15, 2024

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